

REMARKS

Claims 1-38 remain for consideration in this application along with newly added claims 39 and 40. In view of the foregoing amendments and remarks hereunder, the rejections of the last office action are respectfully traversed.

In the Office Action mailed May 10, 2005, claims 1-38 were rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention. More specifically, the limitation of "modified wheat protein concentrate product other than wheat gluten" was objected to as not being supported by the specification. Applicants have removed the limitation of "other than wheat gluten" thereby obviating this rejection.

Claims 1-8, and 20-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Namdari in view of Bassi et al, Singer and applicant's admission of prior art. Independent claims 1 and 20 have been amended to recite that the modified wheat protein concentrate product is formed by dispersing wet gluten in an ammonia solution followed by spray drying. Support for this amendment may be found on page 3, lines 16-18 of the specification. The Examiner states that Namdari discloses a high protein dough mix for a leavened bakery product. The dough comprises a protein material that may include soy products, wheat gluten, milk products, whey products, egg products, nuts and mixtures thereof. It is the Examiner's position that it would have been obvious to one skilled in the art to add any known type of protein such as the ones disclosed by Bassi et al., Singer or the commercially available products listed in the specification depending on the properties wanted. Applicants submit that such a position violates several of the tenets for applying 35 U.S.C. 103 as set forth in MPEP 2141 which states that "When applying 35 U.S.C. 103, the following tenets

of patent law must be adhered to: (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined.” *Hodosh v. Block Drug Co., Inc.* 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

Namdari teaches the use of very traditional types of protein containing ingredients (e.g, soy, gluten, milk, whey, eggs and nuts). Neither Namdari nor any of the secondary references provide any reasonable expectation of producing a successful bakery product or dough using one of the specialty wheat protein ingredients recited in the present claims. As one of ordinary skill in the art would recognize, creation of a baked good involves interactions and reactions among the ingredients which dictate the resulting flavor, texture, and appearance of the final product. Forming a bakery product with acceptable characteristics is not as simple as substituting one kind of protein for another as the Examiner makes out. The interaction between the myriad of possible ingredients is highly unpredictable especially when the use of “non-traditional” proteinaceous ingredients, such as those being claimed, are involved. Because the more conventional ingredients recited in Namdari are well established for use in these types of products, one of ordinary skill would have a reasonable expectation for making substitutions of one such conventional ingredient for another. However, the types of specialty wheat protein ingredients presently recited in the claims have not been used in bakery products of the kind being presently claimed. Therefore, one of ordinary skill would not have a reasonable expectation that these specialty wheat protein ingredients would be successful. While the properties of the individual ingredients are capable of measurement, due to the reactions and

interactions with other ingredients of the bakery products and doughs, the ultimate effect that the individual ingredient will have on the characteristics of the final product are not readily apparent from the characteristics of the ingredients.

Singer et al. was cited as disclosing a wheat gluten which undergoes an oil extraction process utilizing a hydrophobic carrier liquid to remove undesirable organoleptic compounds. Singer does not disclose a modified wheat gluten formed by dispersing wet gluten in an ammonia solution followed by spray drying as presently claimed. Further, it is submitted that the "modification" of the wheat gluten in Singer et al. is attributable to residual carrier liquid (i.e., oil) which remains in the gluten material following extraction rather than a chemical modification of the gluten itself. Singer et al. teach that the specific volume of the sample bread loaves is directly related to the amount residual carrier oil in the gluten. See, col. 7, lines 18-25.

Bassi et al. teach the use of modified wheat glutens in the casting of biodegradable and/or edible films. Bassi et al. do not teach the possibility of using these glutens in bakery products or doughs. As noted above, there is no reasonable expectation of success that the wheat glutens disclosed by Bassi et al. would perform acceptably in bakery products and doughs.

The Examiner's reference or citation to the Applicants' own disclosure reflects an impermissible recreation of the present invention with hindsight. The Examiner has failed to point out motivation within the prior art references for the selection of the specific specialty wheat protein products in the amounts now being claimed other than making the statement that "it would have been obvious to add any known type of protein" to the Namdari product. The Examiner has not pointed to any reference which teaches that any kind of protein may be substituted for any other kind of protein in a bakery product or dough. The Examiner appears to be relying upon a rather limited list

of proteinaceous ingredients in Namdari, all of which are highly conventional baking ingredients, in order to reach this conclusion. As the Examiner has not properly taken official notice that any kind of protein may be substituted for another, Applicants request that the Examiner provide a reference which discusses this teaching.

In view of the deficiencies outlined above, Applicants request that the rejection of claims 1-8 and 20-27 be withdrawn.

Claims 9-19 and 28-38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Namdari in view of Haralampu et al. Claims 9 and 28 contain the same limitations as claims 1 and 20 with the exception that claims 9 and 28 also call for a quantity of a resistant starch. Haralampu et al. was cited as teaching the use of resistant starch in a variety of foods. First, neither Namdari nor Haralampu et al. teach or disclose the specialty wheat protein products being claimed. Thus, this rejection is improper as a *prima facie* case of obviousness has not been set forth. Applicants submit, for all of the reasons stated above with respect to claims 1-8 and 20-27, that claims 9-19 and 28-38 are in condition for allowance.

Applicants have added claims 39 and 40, with claim 39 being in independent format. Claim 39 is simply a narrowed version of claim 1 wherein the first proteinaceous ingredient is specifically recited to be wheat gluten. The list of “second proteinaceous ingredients” has been amended to exclude wheat protein concentrate products. For all the reasons stated above, it would not have been obvious to substitute any kind of protein ingredient for those recited in Namdari. As each protein is chemically different, there is no reasonable expectation of success in making such substitutions in bakery products given the highly unpredictable nature of the interactions with other ingredients. Applicants submit that claims 39 and 40 are also in condition for allowance.

In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited. Should the Examiner have any questions, please contact the undersigned at (800) 445-3460.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 19-0522.

Respectfully submitted,

HOVEY WILLIAMS LLP

By 
Gregory J. Skoch, Reg. No. 48,267
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
(816) 474-9050

ATTORNEYS FOR APPLICANTS

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